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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANK CHARLES PAGE,

Defendant and Appellant.

F077669

(Super. Ct. No. BF169589A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Brian M. McNamara, Judge.

Kevin Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Jennifer M. Poe, Deputy Attorneys General, for Defendant and Respondent.

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* Before Levy, Acting P. J., Smith, J. and DeSantos, J.

INTRODUCTION

Appellant Frank Charles Page stands convicted of grand theft, in violation of Penal Code¹ section 487, subdivision (a), and participation in a criminal street gang, in violation of section 186.22, subdivision (a). Page admitted two prior prison enhancements.

Page contends there is insufficient evidence to support the grand theft conviction because the evidence failed to establish the value of the items stolen exceeded \$950. If the grand theft conviction is reduced to a misdemeanor, Page contends the section 186.22, subdivision (a) conviction must be reversed for lack of a predicate felony offense and the prior prison term enhancements must be stricken.

We affirm.

FACTUAL AND PROCEDURAL SUMMARY

Page's main challenge is to the sufficiency of the evidence establishing the value of the stolen items exceeded \$950. Therefore, we focus our recitation of facts on those relevant to this issue.

On August 31, 2017, at 1:14 a.m., Tarik Safeeh, the owner of Auto Village in Bakersfield at the corner of Oak Street and Chester Lane, called 911 to report seeing two people trying to steal items from the dealership. Safeeh could see the men because the video surveillance at the dealership transmitted to his cell phone. Safeeh could see the men breaking windows and entering vehicles; he thought they were trying to steal a Dodge Charger. Safeeh saw a white SUV, which he thought was a Volkswagen, that he believed belonged to the two men.

Bakersfield Police Officer Christopher Messick was close by and arrived at the dealership just as a white Dodge Durango SUV was leaving the intersection. The Durango SUV and Volkswagen SUV are similar in appearance and Messick thought the

¹ References to code sections are to the Penal Code unless otherwise noted.

Durango probably was involved in the incident at Auto Village. Messick followed the Durango and while behind the SUV, Messick saw the left brake light was inoperable and conducted a traffic stop.

Page was driving the Durango. When Messick walked up to the vehicle, Page was “shaking almost uncontrollably,” appeared to be “drenched” in sweat, and was “stuttering very poorly.” Page had his foot on the brake and had not placed the vehicle in “park.” Messick instructed Page to step out of the vehicle and Messick did a patdown, during which Messick heard a broadcast that the suspects from the Auto Village incident had taken tires and wheels from a vehicle. During the patdown, Messick found two lug nuts in Page’s front pocket.

Page was handcuffed and detained and Messick searched the Durango. Page’s passenger also was detained. He found four tires and rims, which appeared to be new, in the rear of the vehicle. Messick also found a floor jack, a push cart, and a socket wrench.

Officer Daniel Champness responded to the Auto Village incident and met with Safeeh. Champness reviewed the video surveillance showing the suspects moving around a vehicle, removing the tires and wheels, and placing the items into a wagon at the back of the vehicle. There were lug nuts on the ground around the vehicle and the tires were gone. Champness drove to the location of the traffic stop and informed Messick that Page and his passenger were shown on the video surveillance from Auto Village.

Safeeh followed Champness to the traffic stop location. He identified the tires and wheels located in the Durango as the missing tires and rims from Auto Village. Safeeh told officers the tires and wheels were worth about \$6,000.

On September 25, 2017, Page was charged in count 1 with grand theft in violation of section 487, subdivision (a); in count 2 with possession of stolen property in violation of section 496, subdivision (a); and in count 3 with participation in a criminal street gang, in violation of section 186.22, subdivision (a). It also was alleged as to counts 1 and 2 that the offenses were committed for the benefit of a criminal street gang, in violation of

section 186.22, subdivision (b)(1). It was alleged as to all counts that Page had served three prior prison terms, pursuant to section 667.5, subdivision (b).

Jaber Saphieh was a manager at Auto Village. He specialized in Dodge vehicles and worked for Dodge manufacturers before coming to work at Auto Village. Saphieh had experience buying tires and wheels such as the ones stolen by Page. He had purchased the tires and wheels that were stolen by Page and was the only one at Auto Village that made such purchases.

The wheels on the Dodge Charger RT were different than on the Dodge Charger. The Dodge Charger RT vandalized at Auto Village had upgraded wheels and tires. They were OEM Dodge Charger 20-inch, low weight rims. The tires were Pirelli P-Zeros, which are performance tires for Dodge. Pirelli P-Zeros tires cost about \$800 per pair, so the value of the four stolen tires was about \$1,600. The value of the rims, or wheels, was between \$700 and \$1,000 per rim. That meant the stolen rims were valued between \$2,800 and \$4,000.

Saphieh testified the rims retail for about \$1,100 each, but he was able to get a dealership discount and purchased the rims for \$900 each. Saphieh agreed with the People's estimate that the value of the stolen tires and rims combined was about \$5,600. The low end of value for the stolen items was "well above \$950."

The jury returned a verdict of guilty on the count 1 offense and made no finding on the count 2 offense, which had been charged in the alternative. Page entered a no contest plea to the count 3 offense and admitted two prior prison term enhancements. The trial court dismissed count 2 and the remaining allegations on motion of the People.

On June 15, 2018, Page was sentenced to a total term of five years. Page filed a notice of appeal on June 19, 2018.

DISCUSSION

Page contends there is insufficient evidence to support the grand theft conviction because the evidence failed to establish the value of the items stolen exceeded \$950. If

the grand theft conviction is reduced to a misdemeanor, Page contends the section 186.22, subdivision (a) conviction must be reversed for lack of a predicate felony offense and the prior prison term enhancements must be stricken.

Sufficient Evidence of Value

The test for sufficiency of the evidence is whether, reviewing the whole record in the light most favorable to the judgment below, substantial evidence is disclosed such that a reasonable trier of fact could find the essential elements of the crime beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) Substantial evidence is that evidence which is “reasonable, credible, and of solid value.” (*Ibid.*) An appellate court must “presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Reilly* (1970) 3 Cal.3d 421, 425.) “The uncorroborated testimony of a single witness is sufficient to sustain a conviction, unless the testimony is physically impossible or inherently improbable.” (*People v. Scott* (1978) 21 Cal.3d 284, 296.)

Grand theft is committed when the personal property taken is of a value exceeding \$950. (§ 487, subd. (a).) Theft in other cases is petty theft, a misdemeanor. (§ 488.) Value may be proven by opinion evidence or circumstantial evidence. (See *People v. Love* (2008) 166 Cal.App.4th 1292, 1301.) The value for theft crimes is “reasonable and fair market value.” (*People v. Romanowski* (2017) 2 Cal.5th 903, 914.) “Fair market value” means the highest price obtainable in the market place, not the lowest or average price. (*People v. Pena* (1977) 68 Cal.App.3d 100, 104.)

In Page’s case, Saphieh testified that the value of the stolen items was well in excess of \$950 and likely had a value of around \$5,600. Page argues the People were required to prove when Auto Village bought the tires and rims. There is no such requirement in the statute. Regardless, Saphieh testified the Dodge Charger in question had been on the lot only two to three weeks, and he personally had purchased the tires

and rims that were stolen. Thus, the evidence establishes the tires and rims had to have been purchased not more than three weeks prior to the theft.

Page also argues there was no evidence of the fair market value of the items on the date of the theft, August 31, 2017. However, since the vehicle had been on the Auto Village lot for at most three weeks prior to the theft, and the tires and rims had to have been purchased after Auto Village had the vehicle, the prices testified to by Saphieh were relatively contemporaneous with the date of the theft. In addition, Saphieh testified that if someone were to approach him on the street and offer to sell him the tires and rims for \$2,000, he would consider that “a good deal.” Saphieh also testified the low end of value for the stolen items was well above \$950.

Lastly, Page argues there was no documentation or paperwork submitted at trial to support the values testified to by Saphieh. Again, there is no requirement in the statute that documentation be produced to support Saphieh’s testimony. Saphieh had personal knowledge of the value of the items; he was the one who purchased the specialty tires and rims for the Charger in his capacity as the manager of Auto Village. Saphieh’s testimony alone is sufficient to establish the fair market value of the stolen items. (Evid. Code, § 403, subd. (a)(2); see *People v. Coleman* (1963) 222 Cal.App.2d 358, 361 [owner of personal property who is familiar with its original cost is qualified to testify regarding value].)

We conclude Saphieh’s testimony constitutes sufficient evidence the value of the stolen items exceeded \$950. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Consequently, the offense is grand theft.

Additional Contentions

Having concluded the value of the stolen items exceeded \$950 and the theft offense is properly grand theft, we necessarily reject Page’s contention that the gang offense must be stricken for lack of a requisite felony predicate offense. (See *People v. Valenzuela* (2019) 7 Cal.5th 415, 427.)

We also necessarily reject Page's contention that the section 667.5, subdivision (b) prior prison term enhancements must be stricken because the current offense is not a felony. We have concluded the evidence establishes the current theft offense is felony grand theft and thus, the section 667.5, subdivision (b) enhancements are properly imposed.

DISPOSITION

The judgment is affirmed.